

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 821 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHMAD AKHTARHUSEIN @ KADAR MAMAD BHATI

Appearance:

1. Criminal Appeal No. 821 of 1985
MR DP JOSHI A.P.P. for Appellant
MR KARTIKAY RAVAL for Respondent No. 1
MR KI SHAH for Respondent No. 2
NOTICE SERVED for Respondent No. 3
MS AMY YAJNIK for Respondent No. 4
MR EE SAIYED for Respondent No. 4
MR SA BAQUI for Respondent No. 5
MR BR PARIKH for Respondent No. 6
MR ANIL S DAVE for Respondent No. 6
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 11/10/2001

ORAL JUDGEMENT

1. By filing this appeal under section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned the legality of judgment dated May 30, 1985, rendered by the learned Chief Metropolitan Magistrate, Ahmedabad, in Criminal Case No.2557/83, by which six respondents are acquitted of the offences punishable under Sections 420, 467, 468, 471 read with Section 114 of the Indian Penal Code and Section 12-B of the Passport Act, 1967.

2. The respondent No.1 is a Pakistani national and was involved in smuggling activities. He was indulging into smuggling activities in different names. The respondent No.2 was in love with the respondent No.1. The respondent No.1 had purchased one bungalow in Sweta Park Society situated at Ambavadi, Ahmedabad in the name of the respondent No.2. On April 15, 1982, the Customs Officer had raided the aforesaid bungalow and a huge quantity of foreign gold was found. Apart from gold, foreign made articles, some currency notes, a revolver and a passport were recovered amongst other things. On the passport recovered there was a photograph of the respondent No.2. The passport was not in the original name of the respondent No.2, but was in the name of one Mumtaz Ahmad Bhatti. According to the prosecution, in order to obtain the passport the respondent No.1 had used the name of Mumtaz Ahmad Bhatti who was residing in Bhuj. It is also the case of the prosecution that the respondent No.1 had also assumed the name of Kader Ahmad Bhatti and posed as if Mumtaz Ahmad Bhatti of Bhuj was his sister and that she had to go to Pakistan. What was alleged by the prosecution was that the respondent No.3 was associated with respondent No.1; whereas respondent No.4 was working in Sonali Travels Agency of Ahmedabad knowing fully well had prepared an application for passport and other documents and produced the same in the Regional Passport Office at Ahmedabad and had thus assisted in obtaining the passport. According to the prosecution, the respondent No.5 had also produced the application for obtaining passport as well as photographs of respondent No.2 before the respondent No.6 and had thus assisted in obtaining the passport. It was the case of the prosecution that the respondent No.6 had signed on the verification form while passport was sought to be obtained. Thus, the case of the prosecution against the respondents, in short, was that the respondent No.1 had

obtained the passport in false name of respondent No.2; whereas rest of the respondents had abetted the commission of the offences and all the respondents had committed offences punishable under Sections 420, 467, 468, 471 read with 114 of I.P.C. as well as Section 12-B of the Passport Act. The complaint in the case was lodged by Mr.M.L.Gade, who was then serving as Superintendent in the Office of Regional Passport Office, Navrangpura, Ahmedabad, since January 18, 1982. The complaint lodged by Mr.Gade was investigated by Police Inspector ACB Shri N.R. Patil. On completion of investigation, the respondents were chargesheeted of the offences punishable under Sections 420, 467, 468, 471 read with 114 of I.P.C. and Section 12-B of the Passport Act. The charge at Exh.2 was framed by the learned Chief Metropolitan Magistrate, Ahmedabad against the respondents of the offences punishable under Sections 420, 467, 468, 471 read with Section 114 of the I.P.C. and Section 12-B of the Passport Act. The charge was read over and explained to the respondents who pleaded not guilty to the same and claimed to be tried. The prosecution therefore, in all examined 32 witnesses to prove its case against the respondents. The prosecution also produced documentary evidence such as panchnama prepared at the time when specimen signatures of respondent No.2 were taken, report of the handwriting expert, etc., in support of its case against the respondents. After recording of evidence of prosecution witnesses was over, the learned Chief Metropolitan Magistrate, Ahmedabad, explained to the respondents the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure, 1973. In their further statements, the respondents claimed that the case of the prosecution against them was false, but no witness was examined by the respondents in support of their defence. However, the respondent No.4 submitted written statement for consideration of the Court.

3. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was not proved by the prosecution that respondent No.1 had handed over the application form to witness Anwarbhai Hussainbhai of Mandvi, for the purpose of obtaining passport of respondent No.2 in the name of Mumtaz Ahmad Bhatti, nor was it proved that witness Anwarbhai Hussainbhai of Mandvi had handed over the passport of the respondent No.2 to the respondent No.1. The learned Chief Metropolitan Magistrate, deduced that though it was proved by the prosecution that in the passport there was

photograph of the respondent No.2. No reliable evidence was adduced by the prosecution to establish that the respondent No.2 had signed the application submitted before the authorities for obtaining the passport. The learned Magistrate further held that it was not established by the prosecution that the respondents Nos.3 to 6 had either cheated or dishonestly induced the passport authorities to deliver the passport of the respondent No.2, nor was it proved that any valuable security was forged by them for the purpose of cheating, or they had used as genuine passport though they were knowing it to be forged, nor abetted the commission of offences alleged to have been committed by the respondent No.1 or the respondent No.2. In view of the above referred to conclusions, the learned Judge has acquitted the respondents by judgment dated May 30, 1985 giving rise to the present appeal.

4. Mr.D.P. Joshi, learned A.P.P. after taking me through the entire evidence on record, submitted that the learned Chief Metropolitan Magistrate, after having held that the respondent No.1 had interest in obtaining passport and that the forged passport was found from the premises purchased by the respondent No.1 in the name of the respondent No.2, ought to have convicted the respondent No.1 of the offences with which he was charged. According to the learned A.P.P. the passport was obtained in the name of Mumtaz Ahmad Bhatti of Bhuj and as the passport of respondent No.2 was found from the premises belonging to respondent No.1, the respondent No.1 and 2 ought to have been convicted of the offences punishable under Sections 420, 467, 468 471 read with 114 of the I.P.C. and Section 12-B of the Passport Act. What was claimed was that reliable evidence led by the prosecution has been totally mis-appreciated by the learned Chief Metropolitan Magistrate, and as it is proved beyond reasonable doubt that respondents in conspiracy with each other had obtained forged passport of the respondent No.2, the appeal should be allowed and the respondents should be convicted of the offences with which they were charged. I may state that the learned counsel for the respondents Nos.1 to 5 have not remained present. Ms.Sejal Sutaria, learned counsel for respondent No.6 contended that no cogent and reliable evidence is led by the prosecution to establish that the respondent No.1 had obtained passport for the respondent No.2 in a forged name, nor it is established that the respondent No.2 had obtained passport in assumed name and as verification by the respondent No.6 is not proved by the prosecution beyond reasonable doubt, the appeal should be dismissed and judgment impugned in the appeal

should be confirmed.

5. I have taken into consideration the submission advanced at the Bar and reappreciated the entire evidence on record. The evidence of Anwarbhai Hussainbhai P.W.1 Exh.4 establishes that one person named Hamja Ahmad had approached him in his office situated at Mandvi town on February 11, 1982, for the purpose of obtaining passport and that after getting the passport prepared through Sonali International Travels, he had delivered the passport to Hamja Ahmad. The evidence of this witness does not indicate that Hamja Ahmad to whom he had delivered the passport was respondent No.1. In his substantial evidence before the Court he specifically stated that the respondent No.1 was not Hamja Ahmad who had approached him at his office for the purpose of obtaining passport in the name of respondent No.2, nor was the person to whom the passport was delivered. His evidence does not establish that when Haja Ahmad had approached him for passport. Haja Ahmad was accompanied by the respondent No.2. Further it is not established that the respondent No.2 had signed the application form which was submitted for obtaining the passport. Thus case against the respondents Nos.1 and 2 are not proved at all. Further the evidence of witness Rajendra Pachanji P.W.2 Exh.6 makes it evident that on receipt of application for passport from witness Anwarbhai Hussainbhai he had sent Makbul Hussain i.e. the respondent No.5 for obtaining verification certificate and after obtaining passport from the office of Regional Passport Office, Ahmedabad, he had delivered the passport to one person. However, this witness could not identify the person who had taken the passport from him. It is relevant to notice that the evidence of witness Rajendra Pachanji establishes that he had handed over the passport to a person who had brought an authority letter from Anwarbhai Hussainbhai, but he could not identify as to who was the person to whom he had handed over the passport. The specimen signatures and writings of respondent No.4 were taken in the presence of panch witness Babubhai Mangaji who has turned hostile, and even otherwise, the evidence of hand-writing expert Mr.J.J. Patel P.W.28 Exh.55 does not establish that the specimen signatures and the disputed signature of the respondent No.4 were tallying. The prosecution evidence does not establish that the respondent No.4 had given consent or was a party in obtaining the passport in a forged name. Though it is reasonable to conclude that verification application was signed by the respondent No.6, it is difficult to saddle him with any liability, more particularly when the prosecution has failed to establish

its case against the respondents Nos.1 and 2. It is relevant to notice that no evidence worth the name is adduced by the prosecution against the respondent No.4. At the best it can be said that the prosecution has been successful in raising some suspicion of commission of crime by rest of the respondents, but it is well settled that suspicion howsoever strong cannot, take place of the proof and on the basis of suspicion, an accused cannot be convicted.

6. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case it would not be safe to set aside the order of acquittal more particularly, when the evidence has not inspired confidence of learned Chief Metropolitan Magistrate, who had opportunity to observe the demeanour of witnesses. As I am in general agreement with the view expressed by the learned Chief Metropolitan Magistrate, I do not think it necessary either to reiterate the evidence of the prosecution witnesses or to restate the reasons for acquittal given by the learned Chief Metropolitan Magistrate, and in my view, expression of general agreement with the view taken by the learned Chief Metropolitan Magistrate would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the case (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967, S.C.1124, and (2) State of Karnataka v. Hema Reddy and others, A.I.R. 1981 S.C.1417. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Chief Judicial Magistrate, for acquitting the respondents. Suffice it to say that the learned Chief Metropolitan Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to convince me to take the view contrary to the one already taken by the learned Chief Metropolitan Magistrate. Therefore, the appeal is liable to be dismissed

For the foregoing reasons, the appeal fails and is dismissed. Mudammal to be disposed of in terms of directions given by the learned Chief Metropolitan Magistrate, Ahmedabad in the impugned judgement.

/phalguni/